

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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MICHAEL KUZMA,

Plaintiff,

v.

U. S. DEPARTMENT OF JUSTICE,

Defendant.

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**Complaint**

1. This is an action under the Freedom of Information Act (hereinafter “FOIA”), 5 USC §552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records pertaining to Michael Kuzma (hereinafter Kuzma) that have been improperly withheld by defendant U. S. Department of Justice (hereinafter “DOJ”) and its components Executive Office of United States Attorneys (hereinafter “EOUSA”) and the United States Attorney for South Dakota (hereinafter “USASD”).

**Jurisdiction and Venue**

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 USC §552 (a) (4) (B). This Court also has jurisdiction over this action pursuant to 28 USC §1331. Venue lies in the district under 5 USC §552 (a) (4) (B).

**Parties**

3. Plaintiff Michael Kuzma is a Buffalo-based attorney who has used FOIA to secure information from various agencies such as the CIA and FBI on topics ranging from the American Indian Movement, Occupy Buffalo, Native American activist and political prisoner, Leonard

Peltier, and Leslie James Pickering, environmentalist, free speech advocate and a proprietor of Burning Books, a bookstore located on Connecticut Street in the City of Buffalo.

4. Defendant DOJ is a Department of the Executive Branch of the United States Government, and includes component entities EOUSA and USASD. The DOJ is an agency within the meaning of 5 USC §552 (f).

## **FACTS**

### **EOUSA FOIA Request**

5. By letter dated November 1, 2017, addressed to EOUSA, plaintiff requested copies of all records pertaining to Ray Robinson a.k.a. Perry Ray Robinson, Jr. (hereinafter “Robinson”).

6. By letter dated November 30, 2017, EOUSA denied plaintiff’s request.

7. By letter dated December 19, 2017, plaintiff filed an administrative appeal with DOJ component, Office of Information Policy (hereinafter “OIP”).

8. By letter dated January 5, 2018, OIP advised plaintiff that his administrative appeal dated December 19, 2017 had been received on December 29, 2017 and that it had been assigned number DOJ-AP-2018-001866.

9. By letter dated April 26, 2018, OIP, remanded plaintiff’s FOIA request to EOUSA for a search for responsive records.

10. EOUSA failed to search for or produce records falling within the scope of plaintiff’s request.

11. Plaintiff has exhausted the applicable administrative remedies with respect to his FOIA request.

12. Plaintiff has a right of prompt access to the requested records under 5 USC §552 (a) (3) (A) and defendant failed to conduct an adequate search for responsive records and has wrongfully withheld the sought-after documents from plaintiff.

**USASD FOIA Request**

13. By letter November 18, 2018, addressed to USASD, plaintiff requested copies of all records pertaining to Robinson.

14. USASD failed to act on plaintiff's FOIA request as required by 5 USC §552 (a) (6) (A) (i).

15. By letter dated January 3, 2019, plaintiff filed an administrative appeal with OIP.

16. By letter dated February 28, 2019, OIP denied plaintiff's administrative appeal number DOJ-AP-2019-002095.

17. Plaintiff has exhausted the applicable administrative remedies with respect to his FOIA request.

18. Plaintiff has a right of prompt access to the requested records under 5 USC §552 (a) (3) (A) and defendant failed to conduct an adequate search for responsive records and has wrongfully withheld the sought-after documents from plaintiff.

**Requested Relief**

Wherefore, plaintiff prays that this Court:

1. order defendant to conduct a search for any and all responsive records to plaintiff's requests and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to the requests;

2. order defendant to produce, by a date certain, any and all non-exempt records responsive to plaintiff's requests and a Vaughn index of any responsive records withheld under claim of exemption;

3. enjoin defendant from continuing to withhold any and all non-exempt records responsive to plaintiff's requests;

4. grant plaintiff an award of reasonable attorney fees and other litigation costs reasonably incurred in this action pursuant to 5 USC §552 (a) (4) (E) (i); and

5. grant plaintiff such other relief as the Court may deem just and proper.

Dated: May 8, 2019

Respectfully submitted,

s/daire brian irwin  
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